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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretariat

In the present report, the Special Rapporteur focuses on the phenomenon of xenophobia and its conceptualization, trends and manifestations.

The Special Rapporteur expresses the view that in the context of an acute migration crisis, which is further exacerbating prejudice and discrimination and is worsening the situation of vulnerable groups, a clear definition of xenophobia is needed in responding to the crisis. The Special Rapporteur proposes that xenophobia can be said to exist when individuals are denied equal rights on account of the real or perceived geographic origins of the said individuals or groups, or the values, beliefs and or practices associated with such individuals or groups that make them appear as foreigners or "outsiders". This may be explicit and obvious, such as discrimination against recent migrants or refugees. It may also be less directly tied to a recent migration history and may target members of different communities who have lived alongside each other for generations.

The Special Rapporteur lays down key elements that need to be taken into consideration in order to enhance the effectiveness of policies and measures to combat xenophobia.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 25/32. In the report, the Special Rapporteur attempts to bring clarity to the concept of xenophobia, provides an overview of the different applicable norms and frameworks prohibiting xenophobia that have been adopted at the international, regional and national level, and discusses manifestations of the phenomenon of xenophobia.

2. Across the world, millions of people live outside their countries of origin. For many, migration offers the potential for protection from crises, poverty reduction, and heightened profits and innovation as they contribute to the economic and social lives of their host countries. However, with increased migration flows, the world has also witnessed the exacerbation of existing xenophobia and of xenophobic discrimination across the globe. The Special Rapporteur notes that international law defines neither xenophobia nor xenophobic discrimination. The Durban Declaration and Programme of Action, of 2001, acknowledged xenophobia as one of the main contemporary sources and forms of discrimination and conflict, which required urgent attention and prompt action by States, as well as by the international community. The present report draws on an expert consultation that was held at the African Centre for Migration and Society, University of the Witwatersrand, Johannesburg, South Africa, on 30 November and 1 December 2015, where participants from all geographic regions discussed the manifestations of xenophobia in different regions and underscored the need for further research on strategies for combating xenophobia in order to assist stakeholders in developing effective policies and plans of action.

II. Activities of the Special Rapporteur

A. Country visits

3. The Special Rapporteur would like to thank the Governments of Argentina, Australia and Morocco for agreeing to dates for visits in May and November of 2016 and in early 2017, respectively. He hopes to receive an invitation to visit Fiji, Japan and South Africa shortly. The Special Rapporteur urges States that have not yet responded positively to his visit request to do so.

4. The Special Rapporteur visited Greece from 4 to 8 May 2015 (see A/HRC/32/50/Add.1). He expresses his gratitude to the Government for its full support and cooperation in the preparation and conduct of his visit in spite of the numerous economic challenges being faced and the ongoing migration crisis affecting the country.

B. Other activities

5. On 5 August 2015, the Special Rapporteur delivered a statement at the second Annual Law Conference at Strathmore University in Nairobi. On 3 November 2015, on the margins of his presentation to the General Assembly in New York, he took part as a keynote speaker in a special event celebrating the International Decade for People of African Descent, entitled "Confronting the silence: perspectives and dialogue on structural racism against people of African descent worldwide". On 21 and 22 November 2015, he took part in a meeting on discrimination and religion, which was organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and was held in Istanbul. On 25 November 2015, the Special Rapporteur participated in the eighth session of the Forum on Minority Issues, which looked at the issue of minorities in the criminal justice system.

On 26 November 2015, he took part in the official commemoration of the fiftieth anniversary of the International Convention on the Elimination of All Forms of Racial Discrimination, in Geneva.

III. Xenophobia

A. International and regional legal and policy frameworks

1. Overview of the applicable international legal framework

6. The Special Rapporteur would like to recall that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights define discrimination as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on, inter alia, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. These provisions apply equally to racial and ethnic minorities and to foreign nationals such as migrants.

7. The provisions of the International Covenant on Civil and Political Rights apply to all, irrespective of nationality or statelessness.[1] Article 2 stipulates that each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, including on the grounds of national or social origin, birth or other status. The Human Rights Committee, in its general comment No. 15 (1986) on the position of aliens under the Covenant, has stated that "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens".[2]

8. In its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights noted that non-nationals "may face systemic discrimination in both the public and private sphere in the exercise of their Covenant rights".[3] It emphasized that nationality or immigration status "should not bar access to Covenant rights", pointing out, for example, that all children within a State, including those that are undocumented, are entitled to receive education and access to adequate food and affordable health care".[4] The Committee highlighted the fact that the rights under the International Covenant on Economic, Social and Cultural Rights extend to refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status.[5]

9. In the International Convention on the Elimination of All Forms of Racial Discrimination, racial discrimination is defined as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The Convention prohibits national legislation that discriminates against any particular nationality. Although States parties may restrict a limited number of rights to citizens, the Committee on the Elimination of Racial

[1] Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant, para. 1.
[2] Ibid, para. 2.
[3] See para. 24.
[4] See para. 30.
[5] See para. 30.

Discrimination has stated, in its general recommendation No. 30 (2004) on discrimination against non-citizens, that "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim". Under article 2 of the Convention, States parties undertake to encourage integrationist multiracial organizations and movements and other means of eliminating barriers between races. In addition, article 4 requires States parties to condemn all propaganda and organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, by declaring as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts, and by declaring illegal and prohibiting organizations which promote and incite racial discrimination. Finally, under article 7 of the Convention, States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups. The Committee on the Elimination of Racial Discrimination has underscored that States have an obligation to dismantle discriminatory structures, in addition to tackling intentional discrimination. It has also recommended that States take measures "to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects".[6] Furthermore, it has underscored that the Convention provides for protection of racial and ethnic groups that today are especially vulnerable to discrimination driven by xenophobia.[7]

10. A number of other international instruments specifically prohibit discrimination against certain groups. In its general comment No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee on the Elimination of Discrimination against Women clarified that the Convention necessarily applies to sex- and gender-based discrimination that disproportionately affects certain women on account of their race, ethnicity, religion or belief, caste or other status.[8] In its general recommendation No. 26 (2008) on women migrant workers, the Committee on the Elimination of Discrimination against Women calls for non-discrimination and equal rights for migrant workers specifically, highlighting the double impact of gender-based discrimination and xenophobia.[9] The Convention on the Rights of the Child, in article 2, requires States parties to extend and enforce the rights that it provides to all children, without discrimination based on the child's or his or her parent's nationality, ethnic or social origin, birth or other status. Specifically addressing the question of non-discrimination in respect of indigenous children, the Committee calls for the elimination of discriminatory attitudes and practices through the implementation of public information and educational measures.[10] Under the United Nations Declaration on the Rights of Indigenous Peoples, States are called upon to provide effective mechanisms for

[6] Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non-citizens, para. 33.

[7] Committee on the Elimination of Racial Discrimination, general recommendations No. 34 (2011) on racial discrimination against people of African descent, para. 3, and No. 27 (2000) on discrimination against Roma, para. 5.

[8] See para. 6.

[9] See para. 14.

[10] Committee on the Rights of the Child, general comment No. 11 (2009) on indigenous children and their rights under the Convention, paras. 27 and 29.

prevention of, and redress for, inter alia, any form of propaganda designed to promote or incite discrimination based on indigenous identity or origin (art. 8).

11. International frameworks specifically applicable to refugees, stateless persons, internally displaced persons, migrant workers, women and children all contain relevant provisions to combat forms of discrimination that may be rooted in xenophobia. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families guarantees a minimum universal standard of human rights protections irrespective of the migrant workers' legal status. States parties are under a positive obligation to ensure equality of treatment with that of nationals in areas including social security benefits (art. 27), detention (art. 17), emergency medical care (art. 28) and the child's right to access education (art. 30). Furthermore, all migrant workers are entitled to treatment not less favourable than that of nationals with respect to remuneration, conditions of work and terms of employment (art. 25). The Committee on Migrant Workers has called upon States parties to take effective measures, such as hate crime legislation and raising public awareness, to combat all manifestations of racism, xenophobia or related intolerance against migrant workers and members of their families.

12. The Convention relating to the Status of Refugees prohibits States parties from discriminating against refugees on the grounds of their race, religion or country of origin (art. 3). The Office of the United Nations High Commissioner for Refugees (UNHCR) has found that negative public attitudes towards refugees and other vulnerable foreign nationals threaten efforts to protect these groups, and has called for the enactment of hate crimes legislation and measures to promote tolerance, in the framework of the fight against xenophobia.

13. Article 3 of the Convention relating to the Status of Stateless Persons prohibits discrimination against stateless persons on the basis of their race, religion or country of origin. Article 9 of the Convention on the Reduction of Statelessness prohibits States parties from depriving any person or group of their nationality on racial, ethnic, religious or political grounds. The Guiding Principles on Internal Displacement state that internally displaced persons "shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced".

14. A number of the conventions of the International Labour Organization also prohibit discrimination, including the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which protects all workers — nationals and non-nationals alike — from discrimination in equality of opportunity in regard to employment or occupation. The Migration for Employment Convention (Revised), 1949 (No. 97) prohibits discrimination against migrant workers on the basis of nationality (art. 6). Article 3 of the same Convention places an obligation on the State to take all appropriate steps against misleading propaganda relating to emigration and immigration. The Domestic Workers Convention, 2011 (No. 189) obliges the State to address the particular vulnerabilities of migrant domestic workers to discriminatory practices.

2. Regional legal and policy frameworks

(a) Inter-American system

15. The Organization of American States has significant legally binding instruments that are central to combating xenophobia and its manifestations. The Charter of the Organization of American States proclaims the fundamental rights of the individual without distinction as to race, nationality, creed or sex.

16. Article 1 of the American Convention on Human Rights prohibits discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or

social origin, economic status, birth or any other social condition. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) obliges States parties to guarantee economic, social and cultural rights without discrimination of any kind on the grounds of national or social origin (art. 3).

17. The Inter-American Commission on Human Rights has noted that xenophobia emerges more acutely in societies in the region that receive foreign workers and are already stratified along racial and ethnic lines. The jurisprudence of the Inter-American Court of Human Rights has emphasized that regional human rights protections are important for migrants who may be victims of xenophobia and its manifestations, and has underscored the vulnerability of irregular migrants and the need for governments to take special measures to ensure their protection.[11] In its 2003 advisory opinion on the juridical condition and rights of undocumented migrants, the Inter-American Court of Human Rights advised that all non-citizens, regardless of their status or their migratory situation, were entitled to the enjoy the right to non-discrimination and equality as citizens.

18. The Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance explicitly prohibits States parties from adopting any national security measures that are directly or indirectly discriminatory (art. 8). This Convention, which was adopted in 2013, is yet to come into force, as none of the signatories have ratified it to date. The Latin American Parliament has passed a law that obliges States to adopt measures to prevent xenophobia, protect the rights of workers regardless of immigration status, and guarantee the political, social and cultural rights of migrant workers and their families. This legislation is not binding on member States until it is transposed to the national level.[12] The Special Rapporteur recommends that member States adopt these instruments.

(b) Africa

19. The African Charter on Human and Peoples' Rights[13] stipulates in article 2 that "every individual shall be entitled to the enjoyment of the rights and freedoms... without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status". Additionally, article 28 provides that "every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance", thus promoting solidarity within societies.

20. Article 4 of the Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention) provides that the provisions of the Convention shall apply to "all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions". The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) prohibits discrimination against internally displaced persons "in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons".[14] The Kampala Convention also requires States parties to prevent arbitrary displacement by preventing

[11] Inter-American Court of Human Rights, *Nadege Dorzema v. Dominican Republic* (official summary), 24 October 2012.

[12] Latin American Parliament, *Proyecto de ley marco sobre migración en América Latina y el Caribe, trabajadores, familias y grupos vulnerables* (arts. 4, 5, 6, 10, 11 and 15). Available from http://www.parlatino.org/es/proyecto-leyes-marcos (accessed on 10 May 2016).

[13] Available from www.achpr.org/instruments/achpr (accessed on 10 May 2016).

[14] See art. 9.

"political, social, cultural and economic exclusion and marginalization that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion".[15]

(c) Europe

21. Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 1 of Protocol No. 12 thereto require States parties to secure enjoyment of the rights "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". The European Court of Human Rights has requested member States to give due consideration to racist or xenophobic intention in the commission of crimes, during the final assessment of penalties.[16] Moreover, the court has emphasized that States parties must investigate and enact sanctions with respect to racist or xenophobic acts.[17]

22. The Framework Convention for the Protection of National Minorities, of 1995, calls upon States parties to "protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity". Additionally, the European Convention on the Legal Status of Migrant Workers requires signatories to eliminate discrimination in national legislation so as to provide equal treatment to migrant workers.

23. The European Commission against Racism and Intolerance has emphasized the need for States to adopt criminal, civil and administrative law provisions expressly countering racism, xenophobia, anti-Semitism and intolerance.[18] It has also called on member States to establish specialized advisory, supervisory and grievance bodies at the national level to counter such prejudice.[19]

24. The European Union's Racial Equality Directive[20] prohibits both direct and indirect discrimination in member States on the basis of race or ethnicity, with respect to employment and access to other social services such as education, social security, health care, social advantages, and supply of goods and services. In November 2008, the Council of Europe adopted the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, which is aimed at harmonizing substantive criminal law on racist and xenophobic offences. This is to ensure that the same conduct constitutes an offence in all countries of the European Union and that no person can escape liability by changing jurisdiction.

25. The Audiovisual Media Services Directive requires member States to ensure that services provided by audiovisual media services providers do not contain any incitement to hatred based on race, sex, religion or nationality. In addition, member States should ensure that media services providers comply with the requirement that audiovisual commercial communications must not prejudice respect for human dignity or include or promote any

[15] See art. 3.

[16] European Court of Human Rights, *Nachova and others v. Bulgaria* (Nos. 43577/98 and 43579/98), 6 July 2005; and *Stoica v. Romania*, (No. 42722/02), 4 March 2008.

[17] Ibid.

[18] European Commission against Racism and Intolerance, general policy recommendation No. 1.

[19] European Commission against Racism and Intolerance, general policy recommendation No. 2.

[20] Council Directive 2000/43/EC.

discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.[21]

B. Defining xenophobia

26. As already mentioned, there is no internationally recognized legal definition of xenophobia, not even in the various international and regional policy instruments that seek to combat this phenomenon. At the international level, the joint United Nations publication prepared for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance that was held in Durban, South Africa, noted that the definition of xenophobia, and its relationship to racism and racial discrimination, remained evolving concepts.[22] The present report adopts the conception of xenophobia that was advanced in that publication, which suggests that xenophobia "denotes behaviour specifically based on the perception that the other is foreign to or originates from outside the community or nation".[23]

27. It is worth noting that the joint publication attempts to distinguish between racism and xenophobia, while acknowledging a significant overlap between the two. Indeed, while racism has been defined as "an ideological construct that assigns a certain race and/or ethnic group to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth, involving hierarchical relations where the 'superior' race exercises domination and control over others",[24] xenophobia has been described as "attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity… In many cases, it is difficult to distinguish between racism and xenophobia, since differences in physical characteristics are often assumed to distinguish the 'other' from the common identity. However, manifestations of xenophobia also occur against people of identical physical characteristics, even of shared ancestry, when such people arrive, return or migrate to States or areas where occupants consider them as outsiders."[25]

28. Xenophobia intersects with racism in so far as the (racialized) other is also seen as an outsider or foreign and is feared or is perceived to be a threat. This same dynamic occurs with other groups that have been historically discriminated against on the basis of religion, ethnicity, national origin, sex, sexual orientation or gender identification. Subaltern groups are more likely to be subject to xenophobia precisely because of their place "outside" the dominant community identity. A joint United Nations publication issued in 2015 noted that "migrants are particularly vulnerable to discrimination because their ethnicity, race or religion often differs from those of most people in the host country. Women migrants often face discrimination on multiple grounds of sex, ethnicity, religion and migratory status. There is increasing evidence of racism and xenophobia in destination countries against migrant populations who come from other cultures."[26]

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[21] European Commission against Racism and Intolerance, general policy recommendation No. 15, para. 51.

[22] International Labour Organization (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR), *International Migration, Racism, Discrimination and Xenophobia* (2001). Available from www.unesco.org/most/migration/imrdx.pdf (accessed on 11 May 2016).

[23] Ibid., p. 2.

[24] Ibid., pp. 1 and 2.

[25] Ibid., p. 2.

[26] Inter-Parliamentary Union, ILO and OHCHR, *Migration, Human Rights and Governance: Handbook for Parliamentarians No. 24* (2015), p. 84.

29. Specifically, xenophobia must also be understood as rooted in particular histories and political projects. For example, in the Durban Declaration and Programme of Action, Member States of the United Nations identified the slave trade and colonialism as major sources and manifestations of xenophobia, and of other related forms of intolerance. Hence, vestiges of slavery, systems of apartheid, colonialism, and the displacement or genocide of indigenous peoples in the construction of the nation State are proper intersections to consider in addressing the phenomenon of xenophobia, where whole peoples were left outside the national project or marginalized. Significantly, we must avoid presuming that histories of inclusion and exclusion exist mainly or only in relation to national territories. One of the legacies of colonialism is fragmented polities based on exclusion and distrust among fellow citizens. Political projects related to nation-building or to the formation or maintenance of regional political communities can also produce xenophobic rhetoric. This xenophobic rhetoric, especially when espoused by political and other leaders, can be a factor in the incitement of attacks against — or other forms of abuse of — "outsiders" however defined.

30. In the current era of increased mobility, manifestations of xenophobia are both myriad and alarmingly on the rise. Increasingly widespread forms of overt physical violence, hate speech, and intentional, implicit and structural discrimination are rooted in xenophobia. Xenophobia can refer to explicitly held prejudice expressed verbally or violently and can also be manifested through a wider range of discriminatory practices, policies and structures. While many forms of xenophobia relate to exclusion from a national territory, xenophobia may also be manifest in efforts to exclude groups from areas of a country, of a city or even of a neighbourhood. It may also appear in efforts to exclude persons or particular groups from accessing public or private services, institutions or resources. Regardless of the way in which it manifests itself, xenophobia violates the fundamental principles of equality and non-discrimination that are at the core of international human rights law.

31. Similarly, certain socioeconomic conditions are strongly correlated — but not determinative — of xenophobic sentiments and acts. It was stressed in the Durban Declaration, for example, that "poverty, underdevelopment, marginalization, social exclusion and economic disparities"[27] were closely associated with xenophobia and other forms of related intolerance. Perceived and actual material scarcity, heightened by economic crises, has in some cases contributed to increased manifestations of xenophobia, as "insiders" seek to exclude "outsiders" whom they view as undeserving competitors for public and private resources. While such conditions may increase the likelihood of xenophobia, they do not determine its presence or form.

32. A range of different actors may contribute to xenophobic discrimination, including individuals acting alone, individuals acting in concert through informal groups, or formal collectives which can include religious, political and economic organizations. Among these actors are politicians, law enforcement and border control agents, including private security forces, and even persons from the media, who may contribute to the stigmatization of certain groups. Xenophobia may also be embedded in legal and policy frameworks, and in institutions, that have either the purpose or the effect of discriminating against those considered "outsiders" or foreigners, thereby denying them enjoyment of fundamental rights and freedoms.

33. In the Durban Declaration, Member States of the United Nations noted that "xenophobia against non-nationals, particularly migrants, refugees and asylum seekers, constitutes one of the main sources of contemporary racism" and that "human rights

[27] Durban Declaration, para. 18.

violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices".[28] Member States also highlighted the continuing vulnerability of Africans and people of African descent, Asians and people of Asian descent, and indigenous peoples, to xenophobia and related intolerance. Indeed, xenophobia is also often conditioned by other forms of bias and hierarchy, meaning that its targets will often include those labelled outsiders for expressing particular gender characteristics, working in certain economic sectors, falling within an age or income range, or holding distinct religious beliefs. The contemporary rise of anti-Muslim sentiment in various regions around the world highlights the vulnerability of religious minorities in communities where they are socially or politically constructed as outsiders. In that regard, one could also underscore the historical and lingering anti-Semitism in some parts of Europe.

34. Victims of xenophobia and xenophobic discrimination are targeted on account of their actual or perceived status as foreigners. Individuals or groups may be targeted as foreign on account of the multiple and intersecting categories of race, colour, ethnicity, religion, national origin, lineage, nationality, sex, gender, sexual orientation, social class and language, among others. Thus, many manifestations of xenophobic discrimination are proscribed under existing international, regional and national law prohibiting discrimination on these multiple and intersecting grounds. Although existing international and regional human rights law may not use the term "xenophobic discrimination", it applies to that form of discrimination where those who are considered "foreigners" or "outsiders" are targeted on the basis of the prohibited grounds of discrimination. The applicable frameworks discussed below apply to direct and indirect forms of discrimination, and in some cases to discriminatory structures that unlawfully exclude non-nationals and other minorities that are often subjected to xenophobia including Islamophobia, anti-Semitism, Christianophobia, Romaphobia, Afrophobia and other forms of related intolerance.

35. Frameworks for combating xenophobia and xenophobic discrimination should be implemented bearing in mind the vulnerability of the groups concerned. While States should carefully monitor incidents of discrimination against a wide range of potentially vulnerable groups — inter alia, ethnic or religious minorities, migrants and refugees — the responses to such discrimination should be designed and implemented in a manner that does not turn difference into additional fuel for further abuse and into a foundation for more vulnerability." As a concrete example of such adverse effects, the European Commission against Racism and Intolerance noted in its 2014 annual report that in some countries, legislation against hate speech had been disproportionately used against the historical ethnic and religious minorities that it was supposed to protect.

C. Trends and manifestations

36. The movement of millions of people due to conflict and persecution but also to search for better economic and social opportunities has transformed a large number of societies across the globe. According to the Department of Economic and Social Affairs, there are now close to 244 million people living outside their country of citizenship, representing a 41 per cent increase since 2000.

37. With migration, an exacerbation of long-standing divides around, inter alia, race, ethnicity, religion, cultural identities and geographic origins has been observed. These tensions have often led to discrimination, including xenophobic discrimination, and at times to conflicts.

[28] Ibid, para. 16.

38. Xenophobia manifests itself in multiple forms that can be characterized according to the severity, scale, and modality of expression. At its most severe, xenophobia can lead to the expulsion or eradication of population groups. In such instances, State or private actors have targeted a population group — usually citizens — with overt violence or threats. These occurrences have sometimes taken the form of genocide, and although not all forms of genocide are xenophobic, xenophobia often shares with genocide a desire to confirm ethnic supremacy by eradicating those that it considers as outsiders. At the other end of the spectrum — the most micro and informal level — one finds discrimination that can range from bullying to mild hate speech premised on a person's language, appearance or origins, which may even happen in the school playground. Between the two extremes, there is a range of practices, inter alia: political scapegoating, administrative exclusion, selective and restrictive immigration policies, ethnicized competition and conflict, targeted gang violence, police harassment and profiling, stereotyping in the State-owned media and the privately owned media and on social networks, and exclusive selection criteria for schools or neighbourhood associations.

39. The forms of discrimination and the causes of discrimination against perceived outsiders, as well as the language used against them, vary considerably and are often contextually conditioned and site-specific. However, a number of global trends can be observed. Perhaps most notable among these has been political and popular language and policy that codes certain groups or subgroups (whether citizens or immigrants) as threats to the security of the State. These groups are often accused of undermining the stability of the State.

40. Various studies provide explanations for and causes of xenophobic attitudes and practices. These arguments should be considered as complementary rather than competitive perspectives. Some have rooted discrimination and bias in human psychology, asserting that people are naturally and inherently scared of those they perceive to be different, or outsiders, even when there is no demonstrable threat. Distrust and discrimination may well be natural human characteristics, however the targets of such bias are not predetermined; instead, ignorance, a lack of education and knowledge about migrants and/or foreigners, or socialization itself may contribute to xenophobic attitudes and expressions. Other studies have pointed out that in times of economic, political or social instability, people often experience a "deficit of belonging", which leads to a tendency to draw boundaries as a way of achieving individual or collective security.

41. The divisions triggered by the creation of modern political systems have also been identified as a possible cause of xenophobia. This perspective acknowledges the fact that nation States often legitimize ideals of cultural homogeneity in ways that make others — particularly those deemed unassimilable — inherently threatening. This is evident in hostile populist, nationalist political discourse and policies based on the exclusion, rejection and expulsion of "outsiders" including minority groups.

42. More nuanced political perspectives recognize the role played by bias entrepreneurs in achieving mobilization on discriminatory grounds. These may include individuals or groups within or outside government, aspirants for office or incumbents, members of civil society, or those operating as gangs or as informal leaders elsewhere in the community. These "social entrepreneurs", who often build on existing or manufactured moral, economic, security or political crises, scapegoat individuals belonging to a particular ethnicity, religion or nationality or to another axis of differentiation as being responsible for past, current or future threats. Over the past decade, this has been evidenced in practices and policies towards migrants, refugees, asylum seekers and minorities, who are being framed as posing a threat to jobs, to welfare and sometimes to cultural dominance.

(a) Africa

43. Although discrimination against minority groups and immigrants is rarely termed xenophobia across much of Africa, patterns of bias are widespread and have sometimes led to attempts at ethnic cleansing. This has included official policies of exclusion, marginalization and expulsion, alongside forms of violence and more subtle patterns of discrimination. Forms of bias are often negotiated at the subnational level with or without government involvement. Although in many places there are extraordinarily high levels of cultural heterogeneity in which conflict and widespread discrimination are not present, conflicts have often occurred in areas where there is limited formal regulation and limited State presence.[29]

44. As in other parts of the world, acute economic hardship combined with the emergence of competitive politics has created a pool of grievances and incentives for mobilization.[30] As some post-colonial States became weaker, identity politics further became dominant modes of mobilization, inflaming conflict and unrest.[31] A powerful language of indigeneity and nation building was brought along in the post-colonial era. National identity, citizenship, belonging, was previously mobilized as a struggle against colonial rule; post-independence, the politics of citizenship based on autochthony, indigeneity, and authenticity have been widely used to create the insider and outsider[32] dichotomy within the State. Furthermore, such political approaches have also been used in efforts to disqualify political opponents based on challenges to their citizenship, potentially fuelling broader xenophobic sentiments and legitimizing exclusionary nation-building strategies.[33] The electoral crisis and preceding civil war in Côte d'Ivoire illustrates these phenomena.[34]

45. Due to the multi-ethnic nature of most post-colonial African states, xenophobic discrimination within Africa often overlaps considerably with ethnocentrism.[35] Amidst the widespread discrimination against immigrants, there has also been discrimination against long-standing immigrant groups or against "local minorities", who are perceived as non-legitimate or outsiders.[36] This is perhaps most evident during times of overt political violence in which one group seeks to control State institutions or territory by expelling or

[29] Joshua D. Kirshner, "We are Gauteng People: challenging the politics of xenophobia in Khutsong, South Africa", *Antipode*, vol. 44, issue 4 (September 2012), pp. 1307-1328.

[30] Christopher J. Gray, "Cultivating citizenship through xenophobia in Gabon", *Africa Today*, vol. 45, No. 3-4, pp. 389-409; Nadine Sika, "Irregular migration in North Africa: Libya, Tunisia and Algeria", Partners in Development; and Bonaventure Rutinwa, "The end of asylum? The changing landscape of refugee policies in Africa", *Refugee Survey Quarterly*, vol. 21, issue 1-2 (2002), pp. 12-41.

[31] Sabelo J. Ndlovu-Gatsheni, "Do 'Africans' exist? Genealogies and paradoxes of African identities and the discourses of nativism and xenophobia", *African Identities*, vol. 8, issue 3 (2010).

[32] Francis B. Nyamnjoh, "Racism, ethnicity and the media in Africa: reflections inspired by studies of xenophobia in Cameroon and South Africa", *Africa Spectrum*, vol. 45, No. 1, pp. 57-93; and Norbert Kersting, "New nationalism and xenophobia in Africa: a new inclination?", *Africa Spectrum*, vol. 44, No. 1, pp. 7-18.

[33] Beth I. Whitaker, "Citizens and foreigners: democratization and the politics of exclusion in Africa", *African Studies Review*, vol. 48, issue 01 (2005), pp. 109-126.

[34] See A/HRC/19/72, paras. 15-18.

[35] Abu Bakarr Bah, "Democracy and civil war: citizenship and peacemaking in Côte d'Ivoire", *African Affairs*, vol. 109, issue 437 (2010), pp. 597-615.

[36] Loren B. Landau, "Introducing the demons", in *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa*, Loren B. Landau, ed. (Johannesburg, Wits University Press), pp. 1-25; and Francis B. Nyamnjoh, "Racism, ethnicity and the media in Africa: reflections inspired by studies of xenophobia in Cameroon and South Africa".

subjugating groups seen as lesser due to their geographic origin and cultural identity.[37] In addition, historical antagonism exacerbated by constructed identities engineered to institutionalize differences has led to the worst forms of xenophobic violence in parts of the continent, as was the case in Rwanda.[38]

46. Moreover, as a result of the global war on terror and restrictive immigration policies, parts of the region — especially transit countries — have been under pressure from outside to control immigration, which has contributed to further stigmatization of migrants and to increased manifestations of xenophobia[39] and racism. It has been noted that in North Africa, through which sub-Saharan Africans transit en route to Europe, racism has fuelled xenophobic attitudes. This cross-sectional manifestation of racism and xenophobia against people of African origin has been conceptualized as Afrophobia,[40] but also as racial prejudice[41] and as racism.[42]

(b) The Americas

47. The manifestations of xenophobia in the Americas have often been tied to official State practices in repressing political contestation. Some government policies and laws have been identified as contributing to spreading xenophobic attitudes and ideas, and in so doing, to institutionalizing discrimination against outsiders.[43] In some places, national and often monocultural conceptions of the identity and belonging of dominant groups have been promoted with a view to excluding those blamed for posing economic, moral, health or security threats. State-sponsored xenophobic practices may include constructing restrictive categories of belonging,[44] racial profiling by civil servants and security forces and the harassment of "deviant" or "impossible" subjects,[45] and passing laws to prevent or terminate access to social and health-care benefits to migrants,[46] as well as denying them protection of their basic rights and establishing restrictive immigration policies.[47]

48. As elsewhere, xenophobia in the Americas intersects with other forms of discrimination based, inter alia, on race, ethnicity, indigenous status, gender or religion. Although often officially disguised under the rhetoric of hybrid identities and

[37] Sabelo J. Ndlovu-Gatsheni, "Do 'Africans' exist? Genealogies and paradoxes of African identities and the discourses of nativism and xenophobia", pp. 281-295.

[38] See E/CN.4/1994/7/Add.1.

[39] Nizar Messari and Johannes van der Klaauw, "Counter-terrorism measures and refugee protection in North Africa", *Refugee Survey Quarterly*, vol. 29, No. 4 (2010), p. 85.

[40] David Mario Matsinhe, *Third World Quarterly*, vol. 32, No. 2 (2011), pp. 295-313.

[41] Cindy Warner and Gillian Finchilescu, "Living with prejudice: xenophobia and race", *Agenda*, No. 55 (2003).

[42] Kenneth Tafira, "Is xenophobia racism?" *Anthropology Southern Africa*, vol. 34, No. 3&4 (2011), pp. 114-121.

[43] David C. Baluarte, "Inter-American justice comes to the Dominican Republic: an island shakes as human rights and sovereignty clash", *Human Rights Brief*, vol. 13, issue 2 (2006); and Barbara Sutton, "Contesting racism: democratic citizenship, human rights, and antiracist politics in Argentina", *Latin American Perspectives*, vol. 35, No. 6 (2008), pp. 106-121.

[44] Barbara Sutton, "Contesting racism: democratic citizenship, human rights, and antiracist politics in Argentina", pp. 106-121.

[45] Ibid.

[46] Sharon M. Keigher, "America's most cruel xenophobia", *Health and Social Work*, vol. 22, No. 3 (1997), p. 232.

[47] David C. Baluarte, "Inter-American justice comes to the Dominican Republic: an island shakes as human rights and sovereignty clash"; and Laurel Fletcher and Timothy Miller, "New perspectives on old patterns: forced migration of Haitians in the Dominican Republic", *Journal of Ethnic and Migration Studies*, vol. 30, No. 4 (2004), pp. 659-679.

multiculturalism, the "racialization" of certain groups in social structures and cultural practices by State officials and citizens — often through the trivialized use of pejorative terms — plays a role in stigmatizing their belonging and hampers their access to social and economic rights.

49. The historical continuity of discrimination against indigenous people across the Americas has expressed itself through systemic discrimination and outright denial of recognition from the State and its institutions. This discrimination manifests itself in a number of ways, including grave violations of human rights, such as forced displacement, murder, rape, and other forms of violence or intimidation.

50. Taking into consideration the intersectional nature of xenophobic discrimination, it should be noted that discourse on the violations of the rights of migrant women is often limited to the context of trafficking in persons and hardly addresses labour rights at all, especially in regard to domestic workers who are too often the subject of exploitative labour that is exacerbated by bias and stigmatization on account of their origin. In some places, where women of African descent are the most vulnerable group, at the bottom of the socioeconomic stratum, migrant women of African descent are commonly denied the right to access decent work on the basis of their race and also due to gender-based discrimination.[45]

51. Against the backdrop of the global war against terror, South Asian, Muslim, Middle Eastern and Arab communities living in the Americas are increasingly subject to xenophobic rhetoric and discrimination on the basis of their religion. Although often not justified, such groups are, ironically, accused of spreading a language of hate and undermining the tolerance and inclusiveness of the countries of immigration.

(c) Asia-Pacific region

52. In this very diverse region, although some countries may still be experiencing difficulties in integrating indigenous peoples or migrants from generations past, who are still subjected to discrimination and are struggling to be integrated into society, others are primarily sending countries, whose primary concerns with xenophobia relate to the treatment of their citizens elsewhere in the region and beyond. In the face of nationalistic ideals and the harmful ideology of cultural superiority by dominant groups in parts of the region, indigenous peoples are still struggling to assert their rights and retain their cultural identities, while certain migrants have been forced to assimilate in order to be naturalized.

53. Exclusionary policies against immigrants have been implemented in some places and have fostered intensifying anti-immigrant discourse. Immigrants have been constructed as security, demographic and economic threats, often in the context of rising unemployment and increasing numbers of migrant workers.[46]

54. In some countries, migrants have been excluded from accessing State services and have been denied material and social support as well as access to the labour market. Elsewhere, laws have been passed to inhibit the free movement and basic rights of migrant

[45] Tanya Basok and Nicola Piper, "Management versus rights: women's migration and global governance in Latin America and the Caribbean", *Feminist Economics*, vol. 18, No. 2, pp. 35-61.

[46] ILO, "Equality at work: the continuing challenge" (2011), p. 36; and Yoav H. Duman, "Infiltrators go home! Explaining xenophobic mobilization against asylum seekers in Israel", *Journal of International Migration and Integration* (2014), pp. 1-24.

workers.[50] Certain governments have initiated policies that encourage companies to dismiss foreign workers and reduce the quotas of such workers by more than 50 per cent in places.[51]

55. In this region, migrant workers face significant discrimination by governments and citizenry, often in the form of violence against asylum seekers, economic exclusion, and cultural and religious suppression.[52] It has been documented that, in some places, national sentiment and belonging has emerged through the labelling of others as "inauthentic".[53]

56. Ethnocentric attitudes have also sometimes been expressed in religious spheres. For example, Islamophobia has been seen in government interference in religious matters by pointing out what is "extreme", "radical" or unacceptable.[54]

(d) Middle East and North Africa

57. Xenophobia in the Middle East and North Africa region has been linked to rapid economic transformation and diversification,[55] which relies on immigration. Migrants have been perceived as a threat to those who are struggling to benefit from these transformations.[56] Migrants have also been portrayed by dominant ethnic groups as a cultural threat to national identity.[57] This is especially the case in the Middle East, where several countries heavily rely on migrant workers to sustain their economies, and sometimes outnumber the local population.

58. Although there are considerable differences by country, there are numerous reports of host populations across the region displaying high levels of hostility to recent migrant populations, as well as prejudice and intolerance towards groups of "outsiders" including long-standing immigrants and religious or ethnic minorities.[58] In some countries, outsiders are regarded by nationals as being "low-status" or "second-class" citizens.[59] There may be opposition to migrants' access to equal social rights to those enjoyed by nationals.[60] At

[50] ILO, "Equality at work: the continuing challenge" (2011), p. 35.
[51] Ibid., p. 36.
[52] Yoav H. Duman, "Infiltrators go home! Explaining xenophobic mobilization against asylum seekers in Israel", pp. 1-24.
[53] Peidong Yang, "'Authenticity' and 'foreign talent' in Singapore: the relative and negative logic of national identity", *Sojourn: Journal of Social Issues in Southeast Asia*, vol. 29, No. 2 (2014), pp. 408-437.
[54] Scott Poynting and Victoria Mason, "The new integrationism, the state and Islamophobia: retreat from multiculturalism in Australia", *International Journal of Law, Crime and Justice*, vol. 36, No. 4 (2008), pp. 230-246.
[55] Ronald Inglehart, Mansoor Moaddel and Mark Tessler, "Xenophobia and in-group solidarity in Iraq: a natural experiment on the impact of insecurity", *Perspectives on Politics*, issue 3 (2006), pp. 495-505, and Noah Lewin-Epstein and A. Levanon, "National identity and xenophobia in an ethnically divided society", *International Journal on Multicultural Societies*, vol. 7, No. 2 (2005), pp. 90-118.
[56] Daphna Canetti-Nisim and Ami Pedahzur, "Contributory factors to 'political xenophobia' in a multi-cultural society: the case of Israel", *International Journal of Intercultural Relations*, vol. 27, No. 3 (2003), pp. 307-333, and Ami Pedahzur and Yael Yishai, "Hatred by hated people: xenophobia in Israel", *Studies in Conflict and Terrorism*, vol. 22, No. 2 (1999), pp. 101-117.
[57] Noah Lewin-Epstein and A. Levanon, "National identity and xenophobia in an ethnically divided society", pp. 90-118.
[58] Giuseppe Calandruccio, "A review of recent research on human trafficking in the Middle East", *International Migration*, vol. 43, issue 1-2 (2005), pp. 267-299; and Ronald Inglehart, Mansoor Moaddel and Mark Tessler, "Xenophobia and in-group solidarity in Iraq: a natural experiment on the impact of insecurity", pp. 495-505.
[59] Sammy Smooha, *Index of Arab-Jewish Relations in Israel 2003-2009* (Haifa, The Jewish-Arab Center, University of Haifa, 2010).
[60] Ami Pedahzur and Yael Yishai, "Hatred by hated people: xenophobia in Israel", pp. 101-117.

times, this prejudice translates into physical and verbal harassment of individuals.[61] Intolerance by members of the public is often further entrenched by State-sponsored discrimination.[62] Public calls by government bodies and the media for the preservation of countries' identity and culture against the impact of foreigners have also been observed.[63] Certain governments have responded by establishing tougher recruitment policies, sending back "surplus" foreign workers, making the renewal of residence permits more difficult, and restricting where migrants can live and their access to certain sectors of activity.[64]

59. In several countries of the region, nationality is constructed on the basis of religious participation and belonging.[65] Religious minorities have been framed in public discourse as threats to the majority, or as not belonging to the society, and experience prejudice from members of society in addition to economic and political exclusion.[66] Education systems in certain places contribute to promoting and emphasizing the superiority of some religious groups over others and diffuse ethnocentric understandings of history and other cultures.[67]

60. In this region there are also growing concerns about the treatment of migrant women, especially as migration has become more feminized.[68] Migrant women employed as domestic workers are often subjected to exploitative labour practices and to sexual violence and abuse. Their status as foreigners multiplies their vulnerability to gender-based discrimination and violence.

61. The labour sponsorship system[69] in place in many countries in the Middle East does not offer protection to migrant workers,[70] allows employers to exercise excessive power over foreign employees and promotes the spatial and social exclusion of migrants from host societies. Often, low-skilled migrant workers who do not live in the homes of their employers are forced to live in camps and are subjected to poor living conditions and

[61] Ray Jureidini, "Mixed migration flows: Somali and Ethiopian migration to Yemen and Turkey", final report, May 2010.

[62] Sammy Smooha, *Index of Arab-Jewish Relations in Israel 2003-2009*.

[63] Magdalena Maria Karolak and Anjum Razzaque, "Marginalizing or blending of transnational workers: case of the Kingdom of Bahrain", *Somkiet Poopatvilboon*, vol. 1981, issue 1991, p. 100.

[64] Anisur Rahman, "Migration and human rights in the Gulf", available from www.mei.edu/content/migration-and-human-rights-gulf (accessed on 12 May 2016); F. Halliday, "Labour migration in the Arab World", *Middle East Report*, MER 123, pp. 3-10; and Michele R. Gamburd, "Sri Lankan migration to the Gulf: female breadwinners – domestic workers", Middle East Institute, Washington, D.C.

[65] David Zeidan, "The Copts—equal, protected or persecuted? The impact of Islamization on Muslim-Christian relations in modern Egypt", *Islam and Christian-Muslim Relations*, vol. 10, issue 1 (1999), pp. 53-67.

[66] Elizabeth Frantz, "Buddhism by other means: sacred sites and ritual practice among Sri Lankan domestic workers in Jordan", *The Asia Pacific Journal of Anthropology*, vol. 11, issue 3-4 (2010), pp. 268-292; and David Zeidan, "The Copts—equal, protected or persecuted? The impact of Islamization on Muslim-Christian relations in modern Egypt", pp. 53-67.

[67] Thomas Hegghammer, "Jihad, yes, but not revolution: explaining the extraversion of Islamist violence in Saudi Arabia", *British Journal of Middle Eastern Studies*, vol. 36, No. 3, pp. 395-416.

[68] Imee Acosta and Alexander Acosta, "In pain and in wail: a phenomenology of the abuses of the Filipino domestic workers, Qatar"; and Attiya Ahmad, "Migrant domestic workers in Kuwait: the role of State institutions", Middle East Institute, Washington, D.C.

[69] Tristan Brusle, "Living in and out of the host society: Aspects of Nepalese migrants' experience of division in Qatar", *Forum: Qualitative Social Research*, vol. 11, No. 2 (2010).

[70] Pardis Mahdavi, "Gender, labour and the law: the nexus of domestic work, human trafficking and the informal economy in the United Arab Emirates", *Global Networks*, vol. 13, issue 4 (2013), pp. 425-440.

deprived of facilities and services afforded to the host populations.[71] Some governments have gone so far as to restrict the materials that migrants can use to build dwellings, in efforts to entrench the temporary nature of their homes, which contributes further to their stigmatization as a lesser class.[72] In addition to spatial exclusion, these marginalized populations are often deprived of access to essential rights, such as education, health care, property and land ownership, and freedom of movement.[73]

(c) Europe

62. Europe has recently been at the centre of global media coverage and popular debates on the challenges of addressing the almost unprecedented influx of non-European migrants, asylum seekers and refugees. The region has been broadly criticized for its security approach to addressing migration, which at times has not met international human rights standards. Nearly two thirds (76 million) of all international migrants live in Europe,[74] resulting in increased cultural heterogeneity and diversity in areas that are often grappling with economic decline and popular discontent. Migration from outside the region has been perceived as presenting a direct threat to the cultural character of individual countries and the region as a whole. Some governments in the region have favoured an assimilationist integration agenda over multiculturalism, which poses the risks of denying sociocultural rights to minority groups.

63. Europe is seeing rising levels of Islamophobia, the proliferation of political parties with overt anti-immigrant and often broader anti-minority agendas, and an overbearing security approach to migration control, as well as increasing street protests with high levels of xenophobic content. Europe has also witnessed a growing trend of Islamophobia, in addition to long-standing Romaphobia. This has translated into public opinion that sees Islam as inherently opposed to European values of democracy and secularism while in fact ignoring the reality of Muslim communities. "The rise of extremist and violent Islamist movements is often manipulated to portray Muslims in general as unable and unwilling to integrate into European societies and therefore as a security threat. Populist movements claiming to protest against the alleged Islamization of Europe mixed various aspects of Islamophobia with general xenophobic sentiments. It is frequently reported that women wearing a headscarf were sometimes subjected to verbal abuse and harassment in public."[75]

64. According to the European Commission against Racism and Intolerance, generalized anti-immigration rhetoric was successfully used by populist parties during campaigning for the European Parliament elections that were held in May 2014.[76] In this context, the overall model of multiculturalism was portrayed as a dangerous notion and a concept that has failed and is no longer desirable.

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[71] Mohamed Kamel Doraï, "From camp dwellers to urban refugees? Urbanization and marginalization of refugee camps in Lebanon", *Manifestations of Identity: The Lived Reality of Palestinian Refugees in Lebanon* (2010), pp. 75-92; and Simon Haddad, *The Palestinian Impasse in Lebanon: The Politics of Refugee Integration* (Sussex Academic Press, 2003).

[72] Simon Haddad, *The Palestinian Impasse in Lebanon: The Politics of Refugee Integration*.

[73] Mohamed Kamel Doraï, "From camp dwellers to urban refugees? Urbanization and marginalization of refugee camps in Lebanon", pp. 75-92.

[74] Department of Economic and Social Affairs, "Trends in international migration", available from www.un.org/en/development/desa/population/migration/publications/populationfacts/docs/MigrationPopFacts20154.pdf (accessed on 12 May 2016).

[75] See the 2014 annual report on the activities of the European Commission against Racism and Intolerance, paras. 14 and 15.

[76] Michelle Hale Williams, "Can leopards change their spots? Between xenophobia and trans-ethnic populism among Western European far-right parties", *Nationalism and Ethnic Politics*, vol. 16, No. 1, pp. 111-134.

65. Across much of Europe, political statements that may previously have been deemed hate speech or beyond the realm of acceptability have now become part of mainstream political discourse expressing overtly hostile views towards migrants and multiculturalism more generally.[77] The European Commission against Racism and Intolerance has reported that, within the scope of its country monitoring, it has recorded expressions of hate speech and the use of offensive language and stereotypes and derogatory comments made on the streets, in schools and in shops, as well as actual calls for the use of violence against vulnerable groups. The use of inappropriate language and discourse in many parliaments and by State officials has been found to contribute to a public discourse that is increasingly offensive and intolerant. Furthermore, attempts by public figures to justify and/or trivialize the existence of prejudice and intolerance towards certain groups have contributed to perpetuating and increasing hostility towards vulnerable individuals.[78] Anti-migration rhetoric has garnered increasing public support, as evidenced by electoral results across much of the region.

66. This negative attitude towards migrants has often been justified on the basis of accusations that immigrants are generally overrepresented among criminal organizations, and because they are also usually portrayed as a threat to the welfare state due to the rising cost of social subsidies.[79] For example, Afrophobia in Europe has been explained by making reference to multiple causes, including perceptions of Africans as unwanted economic migrants. As a result, people of African origin are discriminated against on the basis of their migration status but are also discriminated against in countries where they have lived for many decades. They live with disproportionate frequency in socially deprived residential areas, are more often stopped and searched by the police and have less favourable health-care outcomes than white populations.[80]

67. As in other regions, a security approach to migration policies predominates. While this need not be xenophobic in and of itself, it has translated into high levels of harassment and discrimination at borders, on the streets, and within public institutions including schools and other State services.[81]

IV. Conclusion and recommendations

68. **In conclusion, given the ambiguity surrounding the notion of xenophobia, there is a need for a more robust research agenda that seeks to consider the sources of xenophobia and the effectiveness of the strategies in place to counter xenophobia, taking into consideration intersectionality, scale, and the multitude of actors involved in creating conflict or mutual respect. Across regions, State institutions responsible for promoting, protecting and fulfilling the rights of the victimized groups are either failing due to complicity or lack of capacity, or due to the complexity in characterizing discriminatory practices. At times, there is overt denial that xenophobia exists within a given society, or else it has become normalized in public discourse and justified by making reference to national values, such as freedom of speech, or to security needs.**

[77] Tjitske Akkerman, "Comparing radical right parties in government: immigration and integration policies in nine countries (1996-2010)", *West European Politics*, vol. 35, No. 3 (2012), pp. 511-529.

[78] European Commission against Racism and Intolerance, general policy recommendation No. 15, para. 24.

[79] Ibid.

[80] See the 2014 annual report on the activities of the European Commission against Racism and Intolerance, paras. 17 and 18.

[81] Jef Huysmans, "The European Union and the securitization of migration", *Journal of Common Market Studies*, vol. 38, No. 5 (2000), pp. 757-777.

Often, the effectiveness of policies put in place to address discrimination in general, including xenophobia, has proved to be limited over time. In that regard, the Deputy High Commissioner for Human Rights noted that 15 years after the adoption of the Durban Declaration and Programme of Action, "slow, uneven, uncertain progress is not sufficient progress".[82]

69. In order to better understand the causes and consequences of xenophobia and the effectiveness of overt counter-xenophobia strategies, there is a need to further document successful initiatives and policies that have fostered increased understanding between diverse populations.[83] The Special Rapporteur will continue examining this issue in his next report to the General Assembly.

70. By working on this thematic focus, the Special Rapporteur hopes to contribute to the ongoing debate on xenophobia and xenophobic discrimination within the framework of the current migration crisis and beyond. He also wishes to express the necessity for the international community to adopt a clear definition of the phenomenon in order to better prevent, remedy and combat its manifestations.

71. The Special Rapporteur acknowledges the frequently occurring obstacles to addressing discrimination and prejudice, which include a lack of political will, lack of understanding of the scope of the issue, and limited capacity. In the recommendations below, the Special Rapporteur shares a set of key elements to be taken into consideration in order to design and implement strategies with improved effectiveness. These include: (a) a local diagnosis of the situation; (b) implementing preventive actions; (c) promoting social solidarity; (d) identifying the appropriate scale of intervention; (e) designing complementarity strategies; and (f) review and assessment.

A. Local diagnosis

72. While the manifestations of xenophobia share certain commonalities across time and regions, its causes vary across and within countries. The discourses of difference and social cohesion are often historically and socially conditioned, as are the grounds of mobilization that are likely to capture popular and political attention. Therefore, strategies for countering xenophobic discrimination and violence, based on the principles of non-discrimination, multiculturalism and tolerance, must be context-specific and carefully adapted to domestic realities. Governments, international organizations, civil society and other private actors should engage in individual assessments of national political language, institutional capacities, and the interests that inform local government policy and practices. Moreover, it should be recognized that preventing or addressing xenophobia necessitates shifting the institutional, political and economic incentives that support continued or heightened xenophobic practices. This requires a high degree of political will and social insight.

[82] Statement by Kate Gilmore, Deputy High Commissioner for Human Rights, 18 March 2016.

[83] Francis B. Nyamnjoh, "Racism, ethnicity and the media in Africa: reflections inspired by studies of xenophobia in Cameroon and South Africa", pp. 57-93; and Francis B. Nyamnjoh, "From bounded to flexible citizenship: lessons from Africa", *Citizenship Studies*, vol. 11, No. 1 (2007), pp. 73-82.

B. Prevention

73. Building on the context-specific assessment, identifying and addressing the incentives for current or potential conflict may help to limit the ability of "entrepreneurs" to mobilize on exclusionary grounds. For example, in contexts where the positive contribution of refugees or other immigrants is portrayed as an added social and economic value, host communities and local institutions may be more readily incentivized to accept and absorb immigrants. Examples from Canada, in which communities with declining populations have actively sought immigrants in order to bolster their workforces and their political weight, may provide guidance in this regard. On the other hand, in order to inhibit or contain the exacerbation of inter-group divisions, effective early interventions should be taken to prohibit or co-opt those who aggravate differences and discrimination to serve a certain agenda. Prevention may also include strengthening inter-group interactions and relations, so as to make them more resilient to divisive agendas.

C. Promoting social solidarity

74. In relation to migration, there is a need to find innovative ways to draw social solidarity from the existing local cultural, social and political context. All actors — including local officials, leaders, private actors, and service providers — who have the power to bring about immediate positive change need to be sensitized to the value of social solidarity. There is a need to move away from a purely State-centred approach and to put further emphasis on a bottom-up implementation of policies to foster social tolerance, mutual respect and trust. Assertions of rights based on the minority status of individuals or groups can be effective in drawing attention to patterns and practices of discrimination including xenophobia. However, as this strategy requires groups that are already in vulnerable situations to be made visible, the necessary safeguards should be taken in order to prevent a further entrenching of categories. For example, Portugal has established a coherent integration policy for immigrants and seriously encourages intercultural dialogue. This is managed by the High Commission for Immigration and Intercultural Dialogue, which is responsible for enacting a progressive action plan for immigrant integration that has clear implementation deadlines.

D. Scale of intervention

75. In addition to a national diagnosis, it is necessary to pay attention to deeply localized sources of conflict and discrimination. In this regard, the role of local actors, including local government, is paramount in taking tailored local administrative and other measures to overcome local barriers to integration and peaceful cohabitation. For example, the City of New York decided to issue all immigrants, regardless of their immigration status, with identity cards in order to enable them to access basic services such as housing, bank accounts, legal services and education.[51] In the United States of America today, through protection of the confidentiality of immigration status, the city sanctuary movement has challenged the exclusion of non-citizens from the enjoyment of rights such as housing, health care, education, police services, employment and social assistance, while advancing alternative ideas of citizenship in

[51] Aaron Morrison, "Immigrant identification card: New York's ID program watched by immigration reform advocates across nation".

the process.[84] In its 2014 annual report, the Inter-American Commission on Human Rights noted actions taken in several countries to promote the rights and well-being of non-nationals, including measures adopted in Uruguay to integrate Syrian refugees into society, providing them with access to housing, medical care, Spanish lessons, and cultural lessons that were also provided to school teachers, students and parents in order to also foster acceptance among the local population.

E. Complementarity and coordinated sectorial strategies

76. It is necessary to address institutional, political, policy and social reforms simultaneously, in ways that mutually reinforce the incentives for integration and solidarity rather than for exclusion. This should include strengthening the rule of law by adopting and implementing at the national level the relevant international standards, particularly those recognizing and protecting rights of minorities, including non-nationals.[85] Perhaps more importantly, it is essential to provide effective judicial, administrative and other remedies to vulnerable groups, including to foreign nationals.[86] However, the establishment of these systems is only likely where there are political and social incentives for solidarity fostered through the creation of spaces and opportunities for the development of overlapping or concurrent interests. This process should be founded on human rights education, through innovative tools such as youth dialogues on migration, social inclusion and diversity.[88] Educational curricula should systematically include multicultural and diversity training. Human rights training for justice officials, law enforcement personnel, social partners and educators should put particular emphasis on non-discrimination and on equal rights for all. Targeted public media campaigns and training courses should be designed with the participation of all stakeholders concerned, with a view to sensitizing the population at large to the principles of equality and non-discrimination, and also to combating racism and prejudice in daily life. As part of such media campaigns, the accent should be put on publicizing the positive contributions of vulnerable groups to economic and social welfare as well as the overall negative effects of discrimination and marginalization.

F. Review and assessment

77. While generalized frameworks and principled statements calling for tolerance and inclusion are an important and necessary step, there are few concrete sources that correlate intervention strategies, local conditions and rates of success. Only through concrete independent monitoring and critical evaluation — by all actors — can we develop the insights necessary to improve future interventions' chances of being successful. In this regard, the Special Rapporteur reiterates the recommendation to establish independent national anti-discrimination monitoring bodies with the power to monitor the effectiveness of policies and enforce anti-discrimination legislation, to receive and act upon individual complaints of discrimination and to accompany

[84] Jennifer Ridgley, "Cities of refuge: immigration enforcement, police, and the insurgent genealogies of citizenship in U.S. sanctuary cities", *Urban Geography*, vol. 29, No. 1 (2008), pp. 53-77.

[85] ILO, IOM, OHCHR, *International Migration, Racism, Discrimination and Xenophobia* (2001).

[86] Ibid.

[88] IOM, Plural+ Youth Video Festival (2015); and European Union Agency for Fundamental Rights, "Promoting respect and diversity, combating intolerance and hate: contribution to the Annual Colloquium on Fundamental Rights" (2015).

vulnerable groups in their claims for justice and equality. Furthermore, research and monitoring of citizens' attitudes towards immigrants, refugees, and other minorities perceived as outsiders should be conducted on a regular basis to feed into policies over time and to inform any necessary adjustments.